

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 Before The Honorable Beth Labson Freeman, District Judge  
4  
5 SVB FINANCIAL GROUP, )  
6 Plaintiff, )  
7 vs. ) Case No. C 24-01321-BLF  
8 FEDERAL DEPOSIT INSURANCE )  
9 CORPORATION, AS RECEIVER FOR )  
10 SILICON VALLEY BANK, et al., )  
11 Defendants. )

12 San Jose, California  
13 Thursday, October 10, 2024

14 TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND  
15 RECORDING 11:30 - 12:21 = 51 MINUTES

16 APPEARANCES:

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1 Thursday, October 10, 2024

11:30 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Court is now in session, the Honorable  
5 Virginia K. DeMarchi presiding. Calling Case 24-CV-01321-  
6 BLF, SVB Financial Group versus Federal Deposit Insurance  
7 Corporation, as Receiver for Silicon Valley Bank, et al., on  
8 for status conference via Zoom.

9 If the parties could state their appearances, please,  
10 beginning with Plaintiff's counsel.

11 MR. PARIS (via Zoom): Good morning, your Honor.  
12 Adam Paris of Sullivan and Cromwell, here for Plaintiff  
13 SVBFG.

14 THE COURT: Good morning.

15 MS. MCGIMSEY (via Zoom): Good morning, your  
16 Honor. Diane McGimsey, also from Sullivan and Cromwell for  
17 Plaintiff SVBFG.

18 THE COURT: Good morning.

19 All right. For Defendants.

20 MR. SORENSEN (via Zoom): Good morning, your  
21 Honor. Stephen Sorensen (Zoom glitch), as Receiver for  
22 Silicon Valley Bank.

23 THE COURT: Okay. And you were frozen there a  
24 little bit Mr. Sorensen. I'm -- hopefully we got all (Zoom  
25 glitch). I'm not sure if that's on the Court's end or your

1 end.

2 MR. SORENSEN: I'm sorry. My apologies. Can you  
3 hear me now?

4 THE COURT: Yeah. Seems okay.

5 MR. SORENSEN: Okay.

6 THE COURT: All right. Who else for the FDICR?

7 MR. SHENKMAN (via Zoom): Michael Shenkman also  
8 from Bailey and Glasser, for FDICR-1.

9 THE COURT: Okay. Good morning.

10 MS. LYNCH (via Zoom): Emily Lynch from Reed Smith  
11 -- sorry -- from Reed Smith for FDICR-1 and FDICR-2.

12 THE COURT: Okay. Good morning.

13 And I know you all have had -- or some subset of you  
14 have had a busy morning before Judge Freeman. So, the focus  
15 of our proceeding today is to see if we can reset on this  
16 discovery issue in light of the correspondence I received  
17 from -- I'm going to call it the Holding Company. That  
18 seemed to work well at our last proceeding.

19 And, so -- so, let's try this again. So, let me just  
20 set the stage by saying that the Court, me, I'm focused on  
21 the question of how best to get to the point of being able  
22 to resolve claims of exclusive privilege, and that's really  
23 my only goal. I'm not worried about who owns the documents,  
24 whether there's a breach of contract occurred in terms of  
25 giving the documents back. I'm really trying to prioritize

1 the review of documents that are claimed to be exclusive  
2 privilege so we can resolve that, and I sent you off to come  
3 up with a plan for prioritizing, and I got something like  
4 seven different proposals.

5       So -- so, then I issued my order and, blah. Okay. So,  
6 in the letter dated October 7th that I got from Sullivan and  
7 Cromwell, you know, I was a little bit surprised by it  
8 because the first -- the first statement that caught my  
9 attention was in the first paragraph, It is not possible for  
10 SVBFG to meet the requirement that it review and prepare a  
11 detailed privilege log of 10,000 reserve documents per week  
12 because there are too many people who would be required to  
13 do that.

14       I did not order the Holding Company to prepare a  
15 privilege log of 10,000 documents per week. What I ordered  
16 or I thought I ordered was review for exclusive privilege at  
17 that pace. And, so, you know, it occurred to me that maybe  
18 I didn't appreciate or now that you've sort of dug into it,  
19 the -- the predictions about the effort that would need to  
20 be undertaken to just review, not log but review, is -- is  
21 greater than what I had understood from our hearing, and I  
22 went back and looked at the transcript, and at our hearing,  
23 we -- again, the focus of the discussion was about using  
24 search terms to prioritize the exclusive privilege review,  
25 and Mr. Sacks I believe told me that his expectation was

1 that when we get through the 300,000 or so documents that  
2 remain for review, we'd be talking about a di minimus number  
3 of documents that would require to be logged for exclusive  
4 privilege, and I believe Ms. McGimsey had maybe a less  
5 sanguine assessment of both the pace of review and the  
6 extent of exclusive privilege, but, you know, that was my  
7 operating assumption is that we're really talking about a  
8 pretty small number of documents that would be subject to a  
9 claim of exclusive privilege and that the remainder might be  
10 privileged but it would be joint privilege or, you know,  
11 confidential or something else.

12       So -- so, that was kind of -- that was why I was  
13 surprised. But, so, in approaching the -- the -- the  
14 current status of this dispute, I think it's important to  
15 distinguish between review for exclusive privilege and what  
16 the Holding Company would actually be required to log.

17       So, for example, if it's burdensome to log for  
18 exclusive privilege because there's going to be exclusive  
19 privilege claims about claims that -- documents that are not  
20 relevant to anything in the case. Okay. Well, we can talk  
21 about that burden, but I would like to distinguish that from  
22 the burden of actually reviewing the documents for exclusive  
23 privilege, the pace of that review.

24       So -- so, that was -- that was -- the -- those were the  
25 concerns that I -- I had and why I thought it would be

1 useful to have this discussion. Let me just pause there and  
2 get an update from the parties about where you are in your  
3 discussions, because I know I sent you back to talk further.

4 So, let me ask -- I don't know if it's Mr. Paris or Ms.  
5 McGimsey who's going to speak on behalf of the Holding  
6 Company.

7 MR. PARIS: Since my microphone's open, your  
8 Honor, this is Adam Paris.

9 THE COURT: Yes. Okay. Great.

10 MR. PARIS: I'll -- I'll take a shot at it and --

11 THE COURT: Okay.

12 MR. PARIS: -- Ms. McGimsey -- if I misstate  
13 something, I'm sure she'll let me know.

14 So -- so, we've spent the better part of the last two  
15 days, your Honor, meeting and conferring. I think, without  
16 getting too far out over my skis -- and certainly Mr.  
17 Sorensen or Mr. Shenkman will correct me if I am -- we seem  
18 to have arrived at a structure that is mutually agreeable to  
19 the parties in terms of how at least to take an initial cut  
20 at dealing with this question of exclusive privilege in a  
21 way that will satisfy the FDIC on one side and -- and get  
22 them the information they need on a timely basis and also be  
23 less burdensome to -- to our client, you know, and make it  
24 at least practical.

25 We're not quite there yet. You know, we -- we had a

1 meet and confer yesterday morning for about 90 minutes, and  
2 it was very -- it was very helpful.

3 THE COURT: Okay.

4 MR. PARIS: And we've exchanged proposals over the  
5 course of yesterday afternoon and this morning up until  
6 about an hour ago. Like I said, I think we're there.

7 There is one open point that we just need to sort of  
8 figure out. We -- I would want to make sure on behalf of my  
9 client -- and I'll go into the details for both in a second,  
10 your Honor, but just to -- just to give you a heads up, I  
11 would want to make sure that on behalf of our client that  
12 there's no prejudice, in other words, that both parties  
13 preserved their rights under your order. They have the  
14 right to seek enforcement of it. We would have the right to  
15 take it to Judge Freeman on an appeal, right, if this  
16 process that we've arrived at doesn't work, doesn't work to  
17 the satisfaction of one of the two parties.

18 So, that's the only item that's still open that I would  
19 look to Mr. Sorensen and Mr. Shenkman to -- to discuss about  
20 and -- and potentially your Honor as well.

21 THE COURT: Okay.

22 MR. PARIS: But subject to that, subject  
23 essentially to a nonwaiver agreement, you know, under Rule  
24 72 and for them under your order, what we've essentially  
25 landed on is their clean team -- they will give directions



1 to their clean team essentially about what they want the  
2 clean team to do, right. They don't need to tell us what  
3 that is. You know, Mr. Sorensen could say, We would like  
4 you to look for X, Y or Z or topic A, B, C. You know, some  
5 of it was outlined in their letter, of course. They'll do  
6 that. They'll give that direction. It will be, as Mr.  
7 Sorensen calls it, a one-way direction. The clean team --  
8 the FDICR's clean team will then do its -- do its work and  
9 spit out documents to us at a -- at 1500 documents a week  
10 clip.

11 So, they'll go through, you know, the materials.  
12 They'll identify ones that are -- you know, sort of  
13 correspond to Mr. Sorensen and Mr. Shenkman's instructions,  
14 and then the only other open point is they'll -- they'll  
15 deliver them to us, and then we can go through -- we, SVBFG,  
16 will then go through the 1500 and say we think this is  
17 privileged, we think this is not privileged, you know, we  
18 think this is Hold Co. only privilege. You know, we'll give  
19 our, you know, perspective on those documents. And anything  
20 that's either joint privileged, you know, not privileged,  
21 you know, not responsive, again, assuming it's not  
22 privileged to us, would be immediately released to the FDIC  
23 -- FDICR-1.

24 THE COURT: Okay.

25 MR. PARIS: And then we would write in -- we would

1 sort of have a pre-populated log, your Honor, of the  
2 documents already that would have, you know, sort of our  
3 perspective on it, and if then Mr. Sorensen and Mr. Shenkman  
4 disagreed with an assertion of Hold Co. only privilege as to  
5 some specific document or documents on that, we would figure  
6 out a process to bring that to your Honor for resolution.  
7 We haven't figured out that mechanism yet. That would  
8 obviously involve, you know, input from your Honor because  
9 we wouldn't want to do something that -- that you don't  
10 appreciate and -- and don't agree with, but that would be  
11 sort of the basic -- the basic process. And then we would  
12 do that, you know, through a week-by-week, 1500 documents a  
13 week. We would continue to work through the ones that are  
14 obviously of -- of principal priority to -- to Mr. Sorensen  
15 and Mr. Shenkman since those are the ones that, you know,  
16 they've sort of, you know, instructed the clean team to --  
17 to try to identify.

18 THE COURT: Okay. Thank you. Let me just ask a  
19 point of clarification. Then I'll get Mr. Sorensen's take  
20 on the -- the almost agreement.

21 So, when you get to the point, meaning when the Holding  
22 Company gets to the point of saying, We think a particular  
23 document has -- is subject to an exclusive privilege,  
24 privilege exclusive to the Holding Company, is a -- is a log  
25 entry generated at that time or only after there is some

1 sort of, you know, back and forth between, I don't know, the  
2 respective clean teams?

3 MR. PARIS: Yeah.

4 THE COURT: Is the idea there's a log sort of  
5 generated automatically?

6 MR. PARIS: Our contemplation is we would generate  
7 it at the time.

8 THE COURT: Okay.

9 MR. PARIS: So, in other words, the would -- so,  
10 just to meat on the bones, your Honor, they would -- you  
11 know, the proposal that Ms McGimsey sent to Mr. Shenkman  
12 would have them delivering us the first slug of 1500  
13 documents if they could do it on this Sunday. Okay. And by  
14 the following Monday, we would tell them, Of course 1500,  
15 here are the ones you can -- here are the ones released,  
16 either because they are jointly privileged, not privileged,  
17 you know, nonresponsive and nonprivileged, whatever. We  
18 don't care, right. Those are all yours. So, pretend that's  
19 like, I don't now, 1400 of them released, and they would get  
20 a log of here are the remaining 100, with the assertion of  
21 Hold Co. privilege, and here is the basis.

22 THE COURT: Right.

23 MR. PARIS: And we would identify document by  
24 document --

25 THE COURT: Okay.

1 MR. PARIS: -- what the basis is for the assertion  
2 of the privilege.

3 THE COURT: And --

4 MR. PARIS: Like I said, we need to figure out  
5 then sort of what to do with that.

6 THE COURT: Okay.

7 MR. PARIS: All right. Then we'll have 100  
8 documents that Mr. Sorensen and Mr. Shenkman want to see and  
9 we're asserting privilege over and we'll --

10 THE COURT: Right.

11 MR. PARIS: -- need to figure out, okay, what --  
12 what comes next, but that --

13 THE COURT: Okay.

14 MR. PARIS: -- would be the process.

15 THE COURT: Okay. And we can talk about that on  
16 this call or later if you wish, but -- but that's helpful.  
17 And you're only logging exclusive privilege claims, not  
18 joint privilege claims, not other -- just exclusive  
19 privilege claims?

20 MR. PARIS: That would be sort of yes and no. The  
21 answer is for purposes of this exercise --

22 THE COURT: Right. Exactly.

23 MR. PARIS: -- yes. And, now, again, it is  
24 important, right, if -- if there's a document that's joint  
25 privileged, right, that's privileged to both our --

1 THE COURT: Right.

2 MR. PARIS: -- clients, no one -- no one client  
3 can waive a joint privilege, right. So --

4 THE COURT: Of course.

5 MR. PARIS: So, there'll be some identification,  
6 right, your Honor --

7 THE COURT: Okay.

8 MR. PARIS: -- of the joint privilege. But the  
9 only point I expect there to be a dispute over will be in an  
10 instance where there's essentially agreement that there's a  
11 privilege but a disagreement as to who -- you know, who's  
12 the -- who's the client, right.

13 THE COURT: Right.

14 MR. PARIS: So, there'd be if you only have rights  
15 to that privilege or is it jointly privileged because if  
16 it's jointly privileged, obviously, the FDICR is entitled to  
17 see it.

18 THE COURT: Okay. Yes. And I -- I respect that,  
19 and my only reason for asking is I just don't want there to  
20 be a delay in the review. I'm sensitive to the remark in  
21 the letter that I received from Mr. Sacks saying, you know,  
22 this would be really really burdensome, and I want to reduce  
23 that burden as much as possible. But, of course, I respect  
24 the parties, you know, if it's efficient, to record your  
25 call on those kind of joint privileged documents, of course,

1 by all means. Let's just not slow this process down.

2 MR. PARIS: Right.

3 THE COURT: And the last question for you, Mr.  
4 Paris, is that I wasn't entirely clear, and maybe I'll find  
5 out from Mr. Sorensen, about what the concern is about  
6 nonwaiver, preserving rights. I mean, as far as I'm  
7 concerned, you know, nobody ever waives their rights unless  
8 you're worried about the timing. If that's the concern,  
9 then let me just say this. If the parties come up with an  
10 agreement on how to do this that is different from my order  
11 that I issued last week, great. I will bless it.

12 And I would expect that if issues arise and  
13 somebody figures out that whatever they thought was the  
14 right subset of documents to look at, oh, now, they've  
15 decided that there's some additional custodian or chunk of  
16 documents they need and things evolve, okay. I would expect  
17 there to be a reasonable sort of accommodation of that or at  
18 least discussion, and a dispute would be brought to me. So  
19 -- so, that's how I would approach it.

20 So, I want to just -- I want to just assure you all  
21 that I'm not wedded to what I did just because I did it. If  
22 you can agree on a process, that's great.

23 MR. PARIS: I very much appreciate that, your  
24 Honor. I'm sure Mr. Sorensen does too. The -- the point  
25 was really purely a technical one. I'm sure Mr. Sorensen --

1 I mean, they'll speak for themselves. I'm sure they are  
2 largely in agreement with your order.

3 THE COURT: Okay.

4 MR. PARIS: So, they wouldn't want to waive the  
5 ability to seek enforcement of that I would --

6 THE COURT: I see.

7 MR. PARIS: -- suspect, in the event that this  
8 process turns out to be a flop for some reason.

9 THE COURT: I see. I see.

10 MR. PARIS: And on the other hand, you know, Rule  
11 72 has a 14-day --

12 THE COURT: Yes.

13 MR. PARIS: -- appeal deadline in it. I wouldn't  
14 want to waive my ability to take issue with your order, only  
15 because we obviously have a principal disagreement there  
16 which I won't --

17 THE COURT: Of course.

18 MR. PARIS: -- reargue, right.

19 THE COURT: Okay.

20 MR. PARIS: But we want to make sure we have that  
21 preserved also. So, it's really just a -- you know, we  
22 would just want to freeze everybody's rights while we --  
23 while we --

24 THE COURT: I understand.

25 MR. PARIS: -- start to step through this week-by-

1 week process.

2 THE COURT: Okay. Well, let's -- let's talk about  
3 the substance of what's under discussion about how this will  
4 be conducted, and let me ask Mr. Sorensen, what's your take  
5 on -- on the proposal?

6 MR. SORENSEN: Yes. Thank you, your Honor. I  
7 think Mr. Shenkman is -- has been much closer to this and is  
8 more knowledgeable.

9 THE COURT: Oh, okay.

10 MR. SORENSEN: So, I'm going to defer to him and  
11 let him speak about the -- the proposal. I guess I would  
12 just throw out there, you know, the reason we ended up here  
13 is we obviously had a disagreement about how to approach  
14 this. We appeared before your Honor. We still couldn't  
15 resolve it. The one -- you know, early on we had suggested  
16 the most practical solution here, which happens all the time  
17 is -- is a clawback. You know, that doesn't put a burden on  
18 them and, you know, that would basically eliminate all of  
19 this back and forth. It would completely eliminate the  
20 burden to them. And, you know, we would be able to look at  
21 the documents, and they would have the right to claw back  
22 any document that was Hold Co. only privilege.

23 So, that is -- that is an alternative and seems to us  
24 the most practical alternative and one that reduces the  
25 burden on them. But --



1 THE COURT: Okay. Well, let me -- let me hear  
2 about what progress you've made and discussion you've --

3 MR. SORENSEN: Sounds good.

4 THE COURT: -- made to the agreed approach to  
5 this, if I may (Zoom glitch).

6 MR. SORENSEN: Sure. Sure.

7 MR. SHENKMAN: Judge DeMarchi, let me start with  
8 the -- the good news I think --

9 THE COURT: Yes.

10 MR. SHENKMAN: -- which is the appreciation to Ms.  
11 McGimsey and Mr. Paris for the -- for the conversation  
12 yesterday and -- and to be at the point following your --  
13 your order where we're looking at release of some of the  
14 documents and logging of any exclusive privilege claims  
15 relatively soon. And, so, that's a definite step forward.

16 THE COURT: Um-hmm.

17 MR. SHENKMAN: With -- with appreciation for their  
18 -- their time yesterday and the correspondence, I think  
19 we're not -- not quite as close as -- as Mr. Pris describes,  
20 not for any reason that is a fatal problem here but just in  
21 terms of the -- of the timing.

22 Even during the -- the hearing that was taking place on  
23 the motion to dismiss, we were clearing up some details of  
24 their most recent proposal, which we worried were going to  
25 make it impossible to come to agreement. Now, I appreciate

1 a lot the additional information they provided that, you  
2 know, there may be something to -- to work out here. That  
3 requires us to go back and have more conversation with our  
4 -- our client in order to do that since the blast exchanges  
5 just over the -- the last hour, that there is some promise  
6 there.

7 THE COURT: Um-hmm.

8 MR. SHENKMAN: One issue that we did not get to  
9 and I -- I think I need to be sure on behalf of the client  
10 to say we're just not there yet is the -- the number of  
11 1500, and maybe it would be helpful to use some of this time  
12 with you to talk about what is a reasonable number to go  
13 through. I mean, Mr. Sorensen mentioned what my client's  
14 position -- what our client's position has -- has been since  
15 the outset here. I understand, of course, Ms. McGimsey and  
16 Mr. Paris have been working this issue for a long time, but  
17 we still have a universe of 300 and some thousand documents  
18 that hasn't changed since September 20th and that we -- we  
19 need to find a way to get through in the available period of  
20 time.

21 Giving us more control over how to work through and  
22 prioritize those documents is unambiguously helpful, and we  
23 appreciate the conversation about that.

24 THE COURT: Um-hmm.

25 MR. SHENKMAN: But -- but going to a -- a rate of

1 1500 is probably not going to be plausible that was the  
2 content of their most recent --

3 THE COURT: And -- and plausible not -- because  
4 it's too fast for you or not fast enough?

5 MR. SHENKMAN: Not fast enough.

6 THE COURT: Okay. Well -- okay. So, let me just  
7 -- let me just understand. At this point in time, had the  
8 -- you know, before the -- the letter I received from  
9 Sullivan and Cromwell, had the FDIC proposed search terms  
10 and a prioritized list of custodians? So -- and the reason  
11 I'm asking that is because maybe the universe that we're  
12 really talking about in terms of what would need to be  
13 prioritized, review, and/or subject to at the outside,  
14 logging, is a smaller number than 300,000. That's what I  
15 was hoping.

16 MR. SHENKMAN: Yeah. I mean, it -- it might be.

17 THE COURT: Okay.

18 MR. SHENKMAN: I mean, just, so, structurally, we  
19 have an -- an asymmetry of information where SVBFG has some  
20 information about what's in the documents both from working  
21 with them and also from being party to the creation of -- of  
22 a significant number of them, and Mr. Sorensen and I do not  
23 know anything about what's in them, and also because, as  
24 counsel to SVBFG, you know, Sullivan and Cromwell was deeply  
25 involved. There's some --

1 THE COURT: Yeah.

2 MR. SHENKMAN: -- potential --

3 THE COURT: Okay. I just -- really, it was a very  
4 basic question is like have we gotten to the point where  
5 it's a smaller number now.

6 MR. PARIS: The answer to your question, your  
7 Honor, if I may jump in.

8 THE COURT: Yes.

9 MR. PARIS: This is Mr. Paris --

10 THE COURT: Yes.

11 MR. PARIS: -- is when we ran the search terms --  
12 and Ms. McGimsey did it. She can speak to it specifically.

13 THE COURT: Okay. Great.

14 MR. PARIS: But when we ran their search terms  
15 over the custodians, they identified it had worked it down  
16 to roughly 30,000 documents.

17 THE COURT: Excellent.

18 MR. PARIS: Right. So --

19 THE COURT: Awesome.

20 MR. PARIS: -- we -- we thought that was actually  
21 quite a bit of progress.

22 THE COURT: That was great.

23 MR. PARIS: Absolutely.

24 THE COURT: And these are the search terms that  
25 Mr. Shenkman and Mr. Sorensen, that your client -- that you

1 proposed on behalf of your client in light of my order?

2 MR. PARIS: Pursuant to your order, your Honor,  
3 they --

4 THE COURT: Okay.

5 MR. PARIS: -- delivered them to us. We ran them  
6 over the -- over the dataset, and that's what it spit out.  
7 There was one term that was a little wonky. I know Ms.  
8 McGimsey could speak to that. So --

9 THE COURT: Okay.

10 MR. PARIS: -- we thought it maybe missed stuff  
11 that they actually want. So --

12 THE COURT: Okay.

13 MR. PARIS: -- you know, allowing for that. But  
14 it's something like 30,000 --

15 THE COURT: Okay.

16 MR. PARIS: -- unique documents as I recall.

17 THE COURT: Which --

18 MR. PARIS: (Zoom glitch.)

19 THE COURT: Yeah. Okay. Go ahead, Ms. McGimsey.

20 MS. MCGIMSEY: Sorry. It's about 30,000  
21 obviously. That's without attachments. But the -- the sort  
22 of principal population is just under 30,000.

23 THE COURT: Okay. So, and the reason I was asking  
24 about that is because I -- I think it's -- it's great if the  
25 FDICR clean team can have some firsthand control about the

1 review, because not only does that relieve some burden but  
2 also you can use your own search terms on the document  
3 collection. So, you know, 30,000 dollars -- 30,000 dollars  
4 -- 30,000 documents sounds like a very very manageable  
5 number for a request to the Holding Company to conduct an  
6 exclusive review. That sounds very manageable. It's very  
7 close to their 25,000 number. And -- and, so, if what --  
8 what the parties are really disputing is the pace at which  
9 the Holding Company will turn around the review, I -- I do  
10 think I -- I want to spend some time talking about that.

11 So, Mr. Shenkman, I don't want to put words in your  
12 mouth, but is that really the essential dispute that remains  
13 between the parties is the pace of review?

14 MR. SHENKMAN: Yes. We need to reserve sort of a  
15 little bit of detail in what's feasible with our clients and  
16 with what the clean team can do, but -- but, yes, I think  
17 both the pace and the question of how to deal with the total  
18 universe of documents if needed in the --

19 THE COURT: Yeah.

20 MR. SHENKMAN: -- time --

21 THE COURT: Yeah. So, I mean, because, you know,  
22 as you could see, one of the things that I did to just try  
23 to like cut through all of the multiple proposals was to say  
24 if the search terms hit on, you know, X, divide that by how  
25 many weeks remain, and that's what you have to get through,

1 and I didn't really have a good sense of what were the right  
2 search terms that were what you were disputing. But if the  
3 search terms hit on 30,000 dollars -- 30,000 documents, at  
4 least as an initial tranche for review, it seems to me like  
5 we could very quickly get to the point where at least I have  
6 some basis to start making decisions about exclusive  
7 privilege, which then could inform the remainder of what you  
8 all do, and that's really why in my initial order I had  
9 hoped to sort of see where things stand in about a month by  
10 having you all do a status report. That was my -- my goal  
11 is to see how things went.

12 So, I -- I do feel that it is appropriate for the  
13 Holding Company to devote resources to this project of  
14 exclusive -- review for exclusive privilege. And I -- I do  
15 think 1500 per week is -- it's even less than the 5,000 per  
16 week that you all proposed. So, I don't understand that  
17 part, and --

18 MS. MCGIMSEY: May I speak to that, your Honor?

19 THE COURT: Yes.

20 MS. MCGIMSEY: So, there -- there was a difference  
21 -- when we're talking about the 5,000 a week, when you're  
22 looking at a population of 250 or 300 thousand, the reason  
23 why that review is going to go much more quickly is because  
24 there's a lot of junk in there. There's going to be stuff  
25 that's -- although this has been through a process where

1 these things have been designated as potentially privileged,  
2 there's going to be stuff that's not privileged. We all  
3 know there's going to be stuff that's easier. There's going  
4 to be stuff that you can restrict, you know, by dates and  
5 things like that. And, so, the review will go much more  
6 quickly.

7       In the initial tranches -- so, what -- the proposal  
8 here contemplates that the FDIC is going to use its clean  
9 team based on the letter that Mr. Sorensen provided to us  
10 after our initial conference and pursuant to your Judge's  
11 order, to identify what they think are the most important  
12 documents. And, you know, our expectation is that those are  
13 also likely going to be the hardest documents.

14       So, that -- that issue is dictating -- will dictate a  
15 slower review, and where we got the 1500 from was from the  
16 FDIC's original proposal. I think they had proposed --  
17 we're basically proposing a week to do those -- do that  
18 review and log the documents and also log relevance and  
19 joint sort of information if -- you know, because I think  
20 that's useful to the parties, so that when we bring  
21 something to you, the parties can narrow it hopefully to  
22 something that's actually about this case, so we don't have  
23 two disputes rather than one. But also, you know, we're --  
24 they asked for I think a three-day turnaround, and we asked  
25 for a slightly longer turnaround, and part of that also is



1 based on an understanding of the documents. Part of what we  
2 have been doing since the bank was closed, of course, is  
3 responding to many subpoenas. We actually -- the -- the  
4 Holding Company's actually been working hand in hand with  
5 the FDIC to respond to -- to duplicate or mirror subpoenas  
6 that have been sent to both of us, and our team has been  
7 reviewing documents on the FDIC's behalf, and -- and I can  
8 tell you I've heard a lot about board packets that are 200  
9 pages long. You know, when I ask about how many documents  
10 were reviewed today and somebody says 20, that's because  
11 some of the materials in here are just going to be very  
12 long.

13 I think once we get through the first couple of  
14 tranches, you know, and the FDIC is targeting the stuff  
15 that's less important to them, it's likely that it's going  
16 to go a lot faster. And, so, what we had proposed -- I  
17 mean, Mr. Paris didn't get into all of the specifics, but we  
18 basically proposed just a two-week process to start so that  
19 the FDIC could get something right away. You know, your  
20 order contemplated something by the 21st. They would have  
21 something by the 21st. It would be based on the clean  
22 team's identification of the most important documents. We  
23 would do that again for another week, and then during that  
24 time period, the parties would discuss the parameters to get  
25 through the rest of that 30,000-ish or whatever the

1 population is because I do believe that we can commit to  
2 something that is a higher number of review and probably, I  
3 would think, even double that once we've spent a couple of  
4 weeks understanding this is what the documents are, these  
5 are what the judgment calls are, and you can instruct a team  
6 so that they're making consistent -- consistent calls across  
7 the board.

8       So, I think it's just a matter of needing a little bit  
9 of ramp-up time, and then we can really start expediting how  
10 we get through these documents.

11           THE COURT: Okay. I -- I appreciate the remarks  
12 about needing to ramp up a team. However, I -- I'm also  
13 sensitive to the point that was made at our last hearing,  
14 which is this is not a new problem. This is a problem that  
15 has been pending for a year. And, so -- and, certainly, to  
16 the extent that the documents that might be subject to an  
17 exclusive privilege claim are documents for which outside  
18 counsel, including Sullivan and Cromwell, is the provider of  
19 the legal advice that's subject to the communication, there  
20 are efficiencies that I would expect to be brought to bear  
21 in identifying those things. The question is is the  
22 communication providing -- seeking or providing privileged  
23 advice, privileged information to the Holding Company only.  
24 That's it. That is the only thing that I care about for  
25 purposes of resolving this dispute. That's the only thing

1 for my purposes that needs to be logged, and I really just  
2 want to emphasize that other considerations in the case  
3 should really take a back seat at least as to these 30,000  
4 or whatever it is that -- that the parties agree is the  
5 universe of things for prioritizing. And I'm really glad  
6 it's 30,000 and not 256,000 or whatever it was with the  
7 initial search terms.

8       So -- so, I'm just -- you know, I'm -- I'm sympathetic,  
9 Ms. McGimsey, but this is going to have to ramp up and ramp  
10 up quickly. So, maybe you need a little bit of time to just  
11 see what the pace can be, but -- but the pace will need to  
12 be faster if you're going to meet Judge Freeman's schedule.  
13 It's just -- yeah.

14       MS. MCGIMSEY: We understand, your Honor, and  
15 commit to you, we can (Zoom glitch) you know, committed to  
16 the FDIC that it will absolutely ramp up. I mean, it just  
17 takes -- the documents -- as an example, we ran the search  
18 terms that were provided to us pursuant to your order. The  
19 documents aren't even like in a review database yet because  
20 they have to get, you know, moved and processed, and, you  
21 know, there's just a lot of mechanics.

22       THE COURT: Yeah.

23       MS. MCGIMSEY: And, so, the first couple of weeks  
24 there is (Zoom glitch) for time that's involved, but if --  
25 if, you know, your Honor and the FDIC would prefer that we

1 be able to take the 30,000 number and build into our  
2 proposal something that gets us all the way out to the  
3 30,000, you know, in advance of the deadlines, starting, you  
4 know, with just only two weeks we've proposed of 1500 a  
5 week --

6 THE COURT: Okay.

7 MS. MCGIMSEY: -- we're -- we're happy to do that.

8 THE COURT: Yeah. I mean, it may be that we need  
9 to have another status conference in two weeks or something  
10 -- you know, three weeks, something like that, something  
11 more prompt. I was just, again, reflecting. I literally  
12 reread the transcript of our entire very lengthy hearing in  
13 September, and, you know, I understood that when a request  
14 was made previously, it was -- it was represented to me that  
15 the turnaround was a couple of days, a couple of day. So,  
16 you know, I -- my expectations are high that these things  
17 can be done efficiently and quickly with the sophisticated  
18 e-discovery tools that you all have at your disposal and the  
19 long time that the Holding Company and its counsel has had  
20 with these documents and its knowledge of the collection and  
21 the custodians, and I don't know who has access to the  
22 custodians, but to the extent the Holding Company has access  
23 to the custodians and can ask questions -- I don't know if  
24 that's the case.

25 MR. PARIS: Yeah, part of our problem, your Honor

1 -- this is Adam Paris again for the record -- is that we  
2 don't. I mean --

3 THE COURT: No, no, no, Holding Company.

4 MR. PARIS: No, the Holding Company. We -- we are  
5 -- all these people are scattered to the winds, your Honor.  
6 They -- they work at First Citizens or they work at other  
7 banks or, you know, they're sitting on the beach somewhere.  
8 You know, they're not really -- you know, they don't have --  
9 we don't have any more access to them, let's put it that  
10 way, than the FDICR-1 --

11 THE COURT: Okay.

12 MR. PARIS: -- does.

13 THE COURT: All right. All right. So -- so, that  
14 may not be a useful tool at all. But -- but, again, my --  
15 my -- I'm really very pleased that you all have talked.  
16 Don't get me wrong. I'm not trying to create dissension and  
17 -- and problems where there isn't one. I would really like  
18 for you to agree on a process, and it may be reasonable to  
19 allow, you know, a two-week trial period to see how it goes,  
20 to see if the review can get ramped up and then revisit.

21 But let me just turn back to Mr Shenkman and -- and  
22 make sure that I have an understanding of what the concerns  
23 are that might still be standing in the way of an agreement.

24 MR. SHENKMAN: Judge, I mean, I -- I think you  
25 certainly have a good handle on it. I do think need to put

1 the marker in that 1500 seems too slow.

2 THE COURT: Um-hmm.

3 MR. SHENKMAN: We did discuss that following the  
4 September 7th -- 17th hearing for a very slow trial period,  
5 but al -- although it was in the Holding Company's proposal  
6 yesterday, it's hard for us to imagine a scenario where that  
7 works, 1500 a week, even at a ramp up, because we're still  
8 at the point where we don't have a single log privilege  
9 claim for documents that are being withheld from us on  
10 privilege.

11 THE COURT: Okay. So, how quickly -- and maybe  
12 this is the part you need to check with your client on --  
13 how quickly can the FDICR clean team identify documents for  
14 review? From your perspective, is it we've identified  
15 30,000, there you go, or is it something else more nuanced?

16 MR. SHENKMAN: I mean, I -- I think there's --  
17 there's both a cost and a timing question on that. We -- in  
18 making that proposal a few weeks ago, we knew that the clean  
19 team could come up with some set of documents, a small set,  
20 that -- that were relevant pretty quickly, but we -- we  
21 really haven't gotten further than that about the clean team  
22 mechanics. We also have the search term body, as you point  
23 out, of -- of 30,000 to work with. So, there's -- rate I  
24 think is the hardest question for us to deal with here.  
25 Sullivan and Cromwell's a big firm. Ten thousand seems a

1 lot closer to us than 1500 does. We -- we took your  
2 directive to the question of how do we make this more  
3 efficient for everybody.

4 THE COURT: Um-hmm.

5 MR. SHENKMAN: But I wouldn't want to leave the  
6 hearing with the sense that 1500 is plausible because, even  
7 realizing that not every one of the 300,000 documents is  
8 relevant to this case, I think some significant body of them  
9 may be, and -- and we got to get -- get started.

10 THE COURT: Okay. Well, yes.

11 MR. PARIS: Your Honor, this is Adam Paris.

12 THE COURT: Yes.

13 MR. PARIS: If I can, quickly. I mean, I -- I  
14 just don't like -- I mean, again, we're -- we're kicking and  
15 screaming on this, your Honor, only because we -- we don't  
16 want to be ordered to do something or commit to do something  
17 that we fall down on.

18 Okay. The fact is, like Ms. McGimsey said, we may be  
19 able to go much faster once everything is truly and well and  
20 truly underway.

21 THE COURT: Yeah.

22 MR. PARIS: But it's not quite as simple as your  
23 Honor has articulated in saying, Hey, look, is there a  
24 privilege here and is it Hold Co. You know, I can't teach a  
25 computer to distinguish in a case -- you know, to Mr.

1 Sorensen's point, this is why he thinks everything is joint  
2 privileged if, if it's privileged at all, where you have  
3 essentially complete overlap between the parties, and -- and  
4 someone really needs to spend time with the document, right,  
5 with the advice that's being delivered, to understand who  
6 the appropriate client is there, where they're not going to  
7 be saying in the email, your Honor, this is for Hold Co.,  
8 this is for bank, this is for both of you, right. I'm just  
9 -- I'm just putting that out there so that your Honor  
10 understands. I know it's been a few years probably since  
11 you've had to do this, but you've done this, right. So, you  
12 know how hard --

13 THE COURT: Yes. No, I've --

14 MR. PARIS: -- privilege review is, right.

15 THE COURT: I understand that.

16 MR. PARIS: Right. So, that's my only --

17 THE COURT: Okay.

18 MR. PARIS: That's my concern. I'm sorry, but  
19 just to wrap it up.

20 THE COURT: All right.

21 MR. PARIS: So, but once we're into it and once  
22 we're through, we may be able to move quite a bit faster,  
23 you know, but if we're starting with the hardest documents,  
24 the ones that the FDICR clean team says, Okay, these are the  
25 direct privilege ones that we think are joint and we think



1 are not Hold Co., we're going to have to spend some time  
2 with it, and that's not the type of thing you can offload  
3 to, you know, some second year associate.

4 THE COURT: I really hope that the prioritization  
5 is not -- is based on relevance in the first instance.

6 MR. PARIS: Of course.

7 THE COURT: That's the useful thing. So -- so,  
8 but Mr. Shenkman, you know, I -- I feel like there's some --  
9 so, and this is maybe not what you're saying, but your folks  
10 on the clean team need to be able to identify the documents  
11 in the first instance. So, if there's a question about  
12 whether you can even do the 1500 per week pace, well, then  
13 -- then you sort of have a mutually -- a mutual practical  
14 problem of just like what is humanly possible that  
15 knowledgeable attorneys on both sides can actually identify  
16 what needs to be reviewed.

17 It seems to me that search terms are the key to  
18 narrowing the universe for prioritization, and if you've  
19 done that to the tune of 30,000 and within that 30,000, the  
20 FDICR is able to say do this 1500, this -- whatever it is,  
21 do these first, do this custodian first, do things that hit  
22 on this term first, like, you can -- you can tell your  
23 people -- you can control that. You have control over that,  
24 about which ones to say do these first in the queue and  
25 then, you know, the pace should just be as quickly as it can

1 be, and we will revisit this issue maybe, maybe -- that's a  
2 process -- we'll revisit this issue in a couple of weeks to  
3 see how it's going. But I -- I really like the idea, and I  
4 appreciate that the parties agreed on the -- or are maybe  
5 going to agree on this, of giving FDICR control over the --  
6 the order, what gets reviewed and the order in which it gets  
7 reviewed, because that -- that allows you to actually, as  
8 you go through it, sort of adjust your priorities. You  
9 know, as you go through and you get documents released and  
10 you -- you see things, you can say, Ah, okay. Well, this is  
11 -- you know, this is what we'd like to see sooner rather  
12 than later. So, I think it's a very important feature.

13       Okay. Let me -- let me pause there and -- do you just  
14 need some more time to see if you can reach agreement?

15       MR. SHENKMAN: Judge, I mean, I think it is  
16 certainly worth us continuing to talk to see if there's  
17 something we can agree on. Knowing that we're not in a  
18 position now to commit the clean team, you know, I don't  
19 know if this is a place we could get, but Mr. Sorensen  
20 introduced the idea at the outset of having us just look at  
21 the documents subject to clawback --

22       THE COURT: Yeah. There's --

23       MR. SHENKMAN: -- when it's --

24       THE COURT: -- no need --

25       MR. SHENKMAN: -- getting close to that.

1 THE COURT: I'm sorry. You know, this was an  
2 argument that was raised in the last hearing. I'm not  
3 trying to go back and redo the last hearing.

4 MR. SHENKMAN: Okay.

5 THE COURT: That's not what this is about. So,  
6 forgive me for cutting that off, but I really --

7 MR. SHENKMAN: Understood. Understood.

8 THE COURT: I'm not sure that I -- that that's an  
9 appropriate thing to do in this situation. I don't have a  
10 502(d) order in front of me. We -- the fighting over  
11 502(b), and then I just -- you know, I'd rather not  
12 introduce additional complexity.

13 MR. SHENKMAN: I understand.

14 THE COURT: Especially if we're talking about  
15 30,000 documents. That is so doable, and whether it's, you  
16 know -- you know, two months or three months, you know, it's  
17 still doable, right.

18 MR. PARIS: We -- we agree -- this is Adam Paris  
19 again. We agree with your Honor. We do.

20 THE COURT: Okay. All right. Well, let me -- let  
21 me finish up with Mr. Shenkman and just -- and just say --  
22 let me just ask a more precise question maybe.

23 MR. SHENKMAN: Yes.

24 THE COURT: How long do you need to confer with  
25 your client about things like what can the clean team do and

1 pace and -- and those kinds of things?

2 MR. SHENKMAN: I mean, if the question of what we  
3 can ask the clean team to do perhaps tomorrow. But I do  
4 think on the question of pace, when we were having  
5 conversations prior to the joint status report, we were  
6 talking about 5,000 documents a week.

7 THE COURT: Yes.

8 MR. SHENKMAN: And so, even though it may be  
9 helpful to us -- we hope it will be helpful to us to select  
10 the documents, 1500 is a pretty slow pace. And just  
11 thinking about baseline, if 10,000 is too many, you know, we  
12 want to set our -- our -- all of our shared expectations  
13 about what we're going to try to get to in the -- in the  
14 right range.

15 THE COURT: Okay. But you may need some trial  
16 period to have that happen I think is what your colleagues  
17 on the other side are saying. My order actually  
18 contemplated that you needed kind of a two-week initial  
19 window to get ramped up, both parties. We've kind of blown  
20 past almost a week of that, but, you know -- you know, I'm  
21 sure that -- I hope that the Holding Company is not just  
22 like stopping all work and that you're continuing to do  
23 whatever you would otherwise be doing in the absence of my  
24 order or in compliance with my order, as you indicated in  
25 the letter. But -- but I am -- I -- I want you all to see

1 if -- you know the documents the best. You know them better  
2 than me. You know what the issues are. I would like to see  
3 if you can reach agreement, and I know that -- because I  
4 listened, that Judge Freeman encouraged you to do exactly  
5 that. So -- so -- or at least work it out with my  
6 assistance.

7       So, I'm prepared to give you a little bit more time,  
8 not a lot of time but a little bit more time to get closure  
9 on this. I will hold my order in abeyance if that's  
10 helpful, but only for a short amount of time because I -- we  
11 really need to press forward, and this can't continue to  
12 linger. So, is that helpful to your process for me to do  
13 that and ask for an update on -- let's see. It's a holiday  
14 weekend, at least for the federal government -- on the -- an  
15 update on the 15th? You're going to give me an update on  
16 the 15th anyway about a couple of things, but I could hold  
17 the earlier part of my order in abeyance.

18           MR. SHENKMAN: Judge, I mean, we think the October  
19 21st first return date is essential.

20           THE COURT: Okay.

21           MR. SHENKMAN: And, so, I'd be really reluctant to  
22 -- to do that. To your question -- and perhaps it's worth  
23 talking about now -- our understanding as of yesterday is  
24 that the work has not continued on the 302,000 documents,  
25 that the Holding Company has -- has put the time into --

1 into other things, and we'd want to make sure going from  
2 this hearing there's absolutely no miscommunication about  
3 where our priorities are and the need to get release of some  
4 of these documents and see some claims of exclusive  
5 privilege if the Holding Company is going to make them.

6 MR. PARIS: Okay. I don't -- I don't know what's  
7 going on, Mr. Shenkman --

8 THE COURT: Mr. --

9 MS. MCGIMSEY: Adam, let me -- let me address  
10 that, please, because I -- I really do need to correct that  
11 misstatement, and we informed Mr. Shenkman yesterday that  
12 actually we have released both custodial documents and other  
13 documents. As you, I think, just referred to in our October  
14 15th update, there's a couple of other sets of documents  
15 that are at issue. We've released another I think 6,000  
16 custodial documents, as well as over 100,000 other files  
17 that are reflected on Sharepoint sites and these sort of  
18 file share sites that are at issue. We -- we learned just  
19 yesterday for the first time from Mr. Shenkman that the FDIC  
20 would prefer for us to focus first on the custodial  
21 documents. We'd actually asked them to prioritize for us,  
22 and if there were certain things relating to Sharepoint SVB  
23 Financial Group subsidiaries that we didn't need to look at  
24 now, to please let us know. So, I -- I assume they're going  
25 to respond to us in writing on that, but -- but now they've

1 informed us that they want us to focus on the custodial  
2 documents first. So, we're going to do that. But we have,  
3 in fact, been reviewing both sets of documents and have  
4 released a very significant number of documents since we  
5 last saw you.

6 THE COURT: Okay. Let me just clarify on the --  
7 just the emails, so, the custodial emails, leaving aside the  
8 other tranches of documents that are noncustodial, what is  
9 the current universe of documents to be reviewed for  
10 exclusive privilege claims, approximately?

11 MS. MCGIMSEY: It's now just under 300,000. I  
12 don't have all the math in front of me, but -- but the  
13 release was about 6,000 documents.

14 MR. PARIS: Right. Last time we were with your  
15 Honor, it was 302,000, and we released 6,879, including  
16 families --

17 THE COURT: Okay.

18 MR. PARIS: -- in the last three weeks.

19 THE COURT: And have there been any claims of  
20 exclusive privilege asserted based on the review that has  
21 been done in the last, you know, two weeks?

22 MR. PARIS: No. Those have been all released.

23 THE COURT: Right. But --

24 MR. PARIS: Those have been released.

25 THE COURT: But -- right. So, the concept is, as

1 you go through, you say release, release, and then  
2 privilege, release, release, privilege. Have there been any  
3 exclusive privilege documents identified based on the  
4 review --

5 MS. MCGIMSEY: There --

6 THE COURT: -- like, to be logged, you know?

7 MS. MCGIMSEY: There have not, but I think --  
8 well, I don't -- without getting too sort of into the weeds,  
9 I think we talked about this during our hearing. You know,  
10 our focus has been trying to identify things that we can  
11 just release as quickly as possible.

12 THE COURT: Got it. All right.

13 MS. MCGIMSEY: And, rather than focusing on let's  
14 target SVBFG privileged documents, we've been saying, let's  
15 target joint privileged or not privileged and get those out.

16 THE COURT: Okay. Okay. So, I understand that.  
17 Thank you for clarifying.

18 All right. I -- subject to anything else that anyone  
19 wants to say today, I am prepared to just -- I want to hear  
20 from you again on -- on Tuesday, the 15th, not only as to  
21 the things I've already directed you to hear -- to tell me  
22 about on the 15th but just on the status of the process for  
23 expediting, prioritizing review of the custodial documents  
24 for privilege? I'd like to -- I'd like to let you finish  
25 your discussions about this because I -- I do think that you



1 have made progress, even if you're not quite there. Okay.  
2 And just keeping in mind the goal, as I said before, I do  
3 think there's a difference between logging. I do not want  
4 anyone to have to log for exclusive privilege documents that  
5 are irrelevant to this case. That -- that's -- that's good.  
6 That's a good thing to be able to agree on if we can agree  
7 on that, but there does need to be review for exclusive  
8 privilege in a prioritized way, and let's -- let's use  
9 search terms if that's helpful. Let's use the -- the  
10 judgment of the FDICR clean team if that's helpful. A  
11 combination of those things may be the most efficient way to  
12 get through it, and I appreciate the parties' efforts in  
13 trying to -- to get there.

14 So, Mr. Shenkman, let me just come back to you. Is  
15 there anything else that -- that you need to address with  
16 me?

17 MR. SHENKMAN: No, Judge. I mean, we're -- we're  
18 happy to continue to work on it. I do -- the -- the October  
19 21st date is important, and how we get there with something  
20 substantial, I understand hearing that from you too.

21 THE COURT: Yeah. Well, I -- I'm not -- I'm not  
22 going to throw out my order. My order's still there. I  
23 guess, you know, the clock is ticking. So, October 6th was  
24 when I issued it. And, so, you'd have 14 days until the  
25 20th. But I really hope that, you know, that we can address

1 the practical problems that I understand now that the  
2 Holding Company has identified about just the capabilities  
3 of review, the pace of -- that can be accomplished, but I  
4 did want to -- I felt the need to clarify that the logging  
5 -- my expectation about logging is not every document. It's  
6 only those for which there is an exclusive privilege claim.  
7 And I would like to get to a point where we can have a --  
8 not maybe a complete logging of everything, but at least  
9 here is a -- here's a -- you know, some -- some entries that  
10 we can at least have a -- a briefing on about the privilege  
11 issue, you know, not at the very end of discovery but  
12 sufficiently in advance so that whatever I can do can inform  
13 your decisions or at least can give you something else to  
14 appeal to Judge Freeman if you wish. So, that's -- that's  
15 my goal. And, so, I'd like to be able to have a process by  
16 which we -- we do that, and that's why I asked for that  
17 status report on November 12th.

18 So, in considering how you might come up with an agreed  
19 resolution, if there's a different date, an earlier date,  
20 you know, that's -- that's my goal, is to try to get you all  
21 to a point where I have something concrete to deal with.

22 Okay. Well, let me just put it this way. I will ask  
23 for a status report on the custodial document procedures for  
24 review on October 15th as well. If you all think you need  
25 some different timing for that, let me know, but my goal is

1 very practical here, and it -- it -- it always has been.

2 So, thank you.

3 MR. SHENKMAN: Judge, may -- may I just ask, so  
4 that we -- we don't have the issue going forward, for Hold  
5 Co. to transmit the released documents in the same format  
6 following your September 20th order? I mean, it would be  
7 helpful to know when --

8 THE COURT: If I -- I'm sorry. What do you want?

9 MR. SHENKMAN: I'm sorry. Your September 17th  
10 order, you had Hold Co. send a list of the -- the documents  
11 that were released that we were permitted to view as the  
12 FDIC, and also a list of -- that is document ID's that were  
13 still being held in the reserve documents.

14 THE COURT: Are you talking about paragraph three  
15 of my October 6th order?

16 MR. SHENKMAN: Uh --

17 THE COURT: So, under the custodial documents,  
18 paragraph three, where it says:

19 "Beginning October 21st and on  
20 every Monday or Tuesday thereafter,  
21 shall identify for those documents  
22 reviewed the documents that you may have  
23 access to and the documents for which  
24 there's an exclusive privilege claim  
25 together with a log"?

1 MR. SHENKMAN: Yes, Judge, but -- but Hold Co. has  
2 just told us in this call about the 6,879 documents. So, I  
3 -- I understand that's in the procedure. Going forward, I  
4 want to make sure that we get that list for what Hold Co.  
5 has just told us has been released so that we're working  
6 from the same population.

7 THE COURT: Okay. I'm not sure what you want me  
8 to order. I mean, I'm not changing my order right now, and  
9 Ms. McGimsey says and Mr. Paris says that they're prepared  
10 to release or have released documents to -- you can  
11 certainly tell them sooner rather than later what the  
12 document IDs are, but I didn't want this to be -- I mean,  
13 you all can agree to do it on a daily basis, but I'm trying  
14 to just set some, you know, kind of regular reporting to  
15 each other about what can be reviewed.

16 So, are you asking me to change my order? I'm not  
17 withdrawing it. So, I don't understand what your -- what  
18 the problem is?

19 MR. SHENKMAN: No, Judge --

20 MS. MCGIMSEY: Your Honor, if I might -- sorry to  
21 interrupt. I think the issue is is that we were -- we were  
22 ordered originally to provide the full list to Mr. Sorensen  
23 and Mr. Shenkman, to the FDIC but through litigation, which  
24 we did. We have been dealing with the clean team for many  
25 months because the clean team has the documents. So,

1 normally when we release documents, we release them to the  
2 FDIC through the clean team.

3 THE COURT: Oh.

4 MS. MCGIMSEY: And then they do -- I don't know  
5 what they do with it, but -- but they -- the clean team is  
6 the one that has the ability to release documents to  
7 litigation counsel and that controls everything. And, so, I  
8 think Mr. Shenkman is just asking that if we provide  
9 information to the clean team releasing documents, that we  
10 provide the duplicate information to litigation counsel as  
11 well rather than them having to get it from their client,  
12 and that's fine from us. That's fine for us.

13 THE COURT: Oh, okay. I'm sorry. I did not  
14 appreciate that that was what you were asking. But I mean,  
15 of course, you all should do whatever is the most efficient.  
16 So, and if the documents are being released, like, of  
17 course, tell litigation counsel. I mean, yeah. Okay.

18 MR. SHENKMAN: Thank you to the Court and to Ms.  
19 McGimsey.

20 THE COURT: Okay. Great.

21 Anything else for today?

22 MR. PARIS: Thing here, your Honor. Thank you.

23 THE COURT: Okay. Good. Well, thank you all very  
24 much. I -- I know it's been a long day for you all. I will  
25 issue just a very brief order with that, you know, please

1 report back on October 5th deadline that we just discussed,  
2 and then I will wait to see. And you can let me know if you  
3 think a further status conference would be helpful. Okay.

4 ALL: Thank you, your Honor.

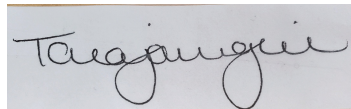
5 THE COURT: The matter is concluded.

6 (Proceedings adjourned at 12:21 p.m.)  
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

A handwritten signature in cursive script, appearing to read "Teagunzie", is centered within a light gray rectangular box.

Echo Reporting, Inc., Transcriber

Tuesday, October 29, 2024